

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**JOHN CASHMAN**

Plaintiff

v.

**CNA FINANCIAL CORP,**

and

**CONTINENTAL CASUALTY COMPANY,**

Defendants

**Civil Action No. 08-5102**

**JURY TRIAL DEMAND**

**PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO FILE A REPLY TO  
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY  
JUDGMENT**

Plaintiff, Mr. John Cashman, by his undersigned counsel, hereby responds to Defendant's Motion to File a Reply to Plaintiff's Response to Defendants' Motion for Summary Judgment.

1. Defendant filed its motion for summary judgment on October 22, 2006 at the eleventh hour: 11:00pm and 11:20 pm., while plaintiff filed its motion for summary judgment at 1:45pm. See Docket Nos. 42, 43. Plaintiff did not receive the defendants' motion until the next day, October 23, 2006.
2. Defendants' motion and exhibits thereto comprised of 423 pages which plaintiff was not able to download until October 23.
3. Plaintiff disputes that his Response was untimely as Federal Rule of Civil Procedure Rule 6(d) provides that when service is made under Rule 5(b)(2)(E), 3 days are added after the period would otherwise expire under Rule 6(a). Thus, plaintiff's response was not due until Monday, November 9, 2009. Plaintiff filed his response by electronic means on November 6, 2009 at 9:53 am, (Docket No. 48) and sent exhibits by fed ex which arrived at the defendants' place of business on November 9, 2009.
4. Plaintiff does not oppose defendants' motion to file a reply within 10 days of the Plaintiff's Response, however, plaintiff anticipates that due to the length of the request (25 pgs), defendant will make new arguments not included in its original filing.

5. Accordingly, plaintiff requests that this court allow a surreply, if plaintiffs' counsel deems necessary, to file within 10 days of defendants' reply, of no more than fifteen pages in order to address new issues or case law in Defendants' Reply.
6. Plaintiff has not opposed Defendants' prior motion for leave to file surreply to Plaintiffs' Motion to Compel which is pending before the Court.

Wherefore, Plaintiff respectfully requests that the Court grant him leave to file a Surreply if necessary to Defendants' Reply to Plaintiff's Response Opposing Defendants' Motion for Summary Judgment after ten days of the Reply.

Dated: November 16, 2009

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Attorneys for Plaintiff  
Mr. John Cashman

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the following legal papers were served upon:

Richard J. Antonelli Esq.  
Rebecca Dick-Hurwitz, Esq.  
Babst, Calland, Clements & Zomnir PC  
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Anita F. Alberts, Esq.  
40 East Court St, 3d Floor  
Doylestown, PA 18901

in the following manner:

Legal Papers:

Plaintiffs' Response to Defendants' Motion to File  
Reply, Proposed Order, Certificate of Service

Manner:

ECF 11/16/09

Date: November 16, 2009

/s/ *Carmen R. Matos*

By: \_\_\_\_\_

Carmen R. Matos, Esquire

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Attorney for Plaintiff

Mr. John Cashman